



CITY OF NATIONAL CITY

1243 National City Boulevard
National City, California 91950

REQUEST FOR PROPOSAL

**WORKERS' COMPENSATION CLAIMS
THIRD PARTY ADMINISTRATOR (TPA)
SERVICES**

PACKAGE FOR REQUEST FOR PROPOSAL

SUBMITTED BY _____
(COMPANY NAME)

NOTICE TO PROPOSERS

The City of National City, California, invites and will receive sealed proposals until 6:00 p.m. on

August 22, 2013 6:00PM (PST)

(DEADLINE DATE)

A public opening/reading of this RFP **will not** occur

at the offices of the City of National City, 1243 National City Boulevard, National City, CA 91950, for the award of an agreement, as follows:

Proposals must be submitted on forms and format provided by the City of National City, including all applicable forms detailed and contained in this package.

ADVERTISEMENT DATES:

July 17, 2013

July 22, 2013

CONTACT PERSON:

Stacey Stevenson

Director of Administrative Services

Telephone: 619-336-4232

Fax: 619-619-336-4303

E-mail: sstevenson@nationalcityca.gov

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NON-COLLUSION DECLARATION

The undersigned declares:

I am the _____ of _____, the party making the foregoing proposal.

The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive. The Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal. The Proposer has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal, or to refrain from proposing. The Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Proposer. All statements contained in the proposal are true. The Proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof, to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this ____ day of _____, 20__ at

(City, County and State)

By: _____
(Signature) (Date)

(Typed or Printed Name) (Title)

(Address) (Phone/Fax with area code)

(City/State/Zip) (Email Address)

PROPOSAL FORM

City of National City
1243 National City Boulevard
National City, CA 91950

Re: Request for Proposal, Worker Compensation Administrator

To: City of National City

The undersigned, doing business under the full and complete legal firm name as set forth below, having examined the Notice to Proposers, Proposal Form, Instructions to Proposers, the General Conditions, the Scope of Work, the Agreement, and all other documents forming a part of the proposal package for the above-referenced proposal, hereby proposes to perform the Agreement, including all of its component parts, and to furnish all materials called by them for the entire project for the prices set forth in the Proposer's proposal package. The entire proposal package is to be submitted, together with this Proposal Form.

Name of Company_____

Legal Status
(i.e., sole proprietorship, partnership, corporation) _____

Tax I.D. Number _____

Address: _____

Authorized Representative: _____

Signature

Name (print or type)

Title

Date:_____

Telephone: _____

Fax: _____

E-Mail Address:_____

GENERAL INSTRUCTIONS SECTION

1. BACKGROUND

The City of National City operates under the City Council-City Manager form of government. The City's current administrative model utilizes the combined skills of City staff in conjunction with the complete services provided by an independent contractor (TPA) to coordinate all aspects of an integrated Workers' Compensation Program, to include, but not be limited to investigating and adjusting claims, arranging medical services and medical referrals, determining compensability of injuries and illnesses, complying with Federally mandated CMS reporting, establishing and maintaining a medical provider network and a light duty/return to work program for industrially injured employees and other appropriate ancillary and supporting programs as needed.

Per fiscal year, there are approximately 76 indemnity claims and 36 medical-only claims submitted under our current process. Presently, there are approximately 107 open indemnity and medical-only claim files. All open workers' compensation claims will be handled by the awarded TPA. **Please see Exhibit A, Public Self Insurer's Annual Report, for additional information.**

2. GENERAL SCOPE

The City of National City (hereinafter referred to as "City") is soliciting proposals from qualified individuals and/or organizations (hereinafter referred to as "Proposers" or "TPAs") capable of providing the City with Workers' Compensation Claims Administrator Services (hereinafter referred to as "administrative services") as detailed herein. Specifically, it is our goal to contract with a qualified entity that will provide comprehensive Third Party Administrator (TPA) Services for the City's Workers' Compensation Program.

This proposal is for awarding an agreement to cover a two (2) year period with options to renew under the same terms and conditions. The first year applicable in the agreement will begin on September 1, 2013.

The City may, at its option and with the approval of Proposer / Consultant, extend the period of this agreement up to a maximum of three (3) one-year options, provided the scope of the engagement does not change. The agreement shall automatically renew unless the consultant is notified thirty (30) days prior, in writing by the Director of Administrative Services, of the intention to terminate. Termination of the Agreement by the City can occur at any time during the Agreement period and at the City's discretion.

The TPA selected by the City will be required to review the existing Workers' Compensation Program and base its services on the current and foreseeable requirements for the proper administration of these services. These requirements may be imposed by Federal, state, and/or local authority, by technological requirements, or by requirements internal to the City.

Proposers responding to this RFP must meet the requirements set forth in the General Instructions, Scope of Work and General Conditions. The successful Proposer will provide comprehensive Workers' Compensation Third Party Administrator services throughout the term of the contract. These services will be provided under the direction of the City's Human Resources Department, Risk Management Unit in accordance with agreed-upon terms and compensation. The Proposer will be retained for a monthly TPA services fee and be further compensated for allowed fees for services to individual workers' compensation claims in accordance with the fee schedule submitted with the proposal. This RFP is being issued by the City to solicit qualification and price proposals for the specified scope of services herein. All specified services and requirements shall be provided to the City at the prices offered by Proposer in their submitted cost proposal.

Proposers must, in their submitted proposals, clearly present evidence that they are a competent and qualified individual and/or organization capable of providing the administrative services detailed herein. Proposers shall, in their submitted proposals, detail their experience, expertise, qualifications, and proposed methodology to provide the administrative services detailed in this Request for Proposal (RFP).

In order to be considered in the RFP process, the Proposer must meet the following minimum requirements and submit a proposal in accordance with the enclosed specifications:

- A. The Proposer must possess the required licenses, certifications, and insurance to perform services in every area designated in the attached specifications; and
- B. The Proposer must have experience providing Workers' Compensation program administration for public agencies in the State of California.

All interested parties are encouraged to carefully review the RFP submission requirements information contained in this document. No proposals shall receive consideration by the City unless made in accordance with the instructions, conditions, and requirements detailed herein, and omission or non-conformance of any terms, conditions, or requirements may result in disqualification.

This Request for Proposal (RFP) shall not obligate the City to purchase or contract for any services specified herein. Furthermore, the City reserves the right to accept or reject any or all proposals received, to negotiate with any qualified source, or to cancel in part or in its entirety this RFP if it is determined by the City to be in its best interest.

3. INTERPRETATION OR QUESTIONS ON RFP DOCUMENTS

If any Proposer submitting a proposal has a question or is in doubt as to the true meaning of any part of the specifications or other documents, or finds any discrepancies in or omissions from documents, it may **submit a written or e-mail request** for an interpretation, clarification or correction, **on or before 1:00PM (PST) Monday, July 29, 2013**, to:

Stacey Stevenson
Director of Administrative Services
City of National City
1243 National City Boulevard, Suite A
National City, CA 91950
E-mail: sstevenson@nationalcityca.gov

Do not contact any other City employee regarding this request For Proposal.

The terms and conditions contained in the Request for Proposal may only be amended or modified by written authorization of the City. Any modification, qualification, exception or change made to the City's terms and conditions detailed herein without prior written approval from the City may be grounds for rejection of the proposal. **Any addenda or bulletins issued shall form a part of the terms, conditions, requirements and/or specifications and shall be an applicable part of the contract documents.** The City reserves the right to revise/amend the RFP prior to the date that proposals are due.

4. SUBMISSION OF PROPOSALS

Proposals are requested to be submitted in a bound form (i.e. ringed binders, spiral binders, etc.) in order to facilitate easy review and access by the City's evaluation committee, of the submitted proposal information and documents. **In addition to the required number of hard copies, the City requires that a proposal, in its entirety, be submitted on a CD or USB flash drive. Please provide the City a PDF (not a scanned PDF) of the response. Proposer should provide separate Technical Proposal and Price Proposal files within the CD or USB flash drive.**

In order to be considered responsive to this RFP, proposals submitted must include:

- A. One (1) original and four (4) copies of a **Technical Proposal** packaged *****SEPARATELY***** from the Price Proposals.
- B. One (1) original and four (4) copies of a detailed **Price Proposal** packaged *****SEPARATELY***** from the Technical Proposal.
- C. One (1) original and four (4) copies of a detailed **Price Proposal** packaged *****SEPARATELY***** from the Technical Proposal.
- D. **If applicable**, copies of any current Licenses and Certifications related to the services detailed herein.
- E. All other submittals as stated herein

The signature of all individuals should be in **blue** ink and in long hand. Completed forms should be without interlineations, alterations, or erasures.

Envelopes/packages must be labeled and the Proposer's business name, address on the exterior of the envelope/package.

The proposal must be prepared in a clean and professional manner. No pencil figures or erasures permitted. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by person signing proposal. No oral, telegraphic, facsimile, or telephonic modifications will be accepted.

Proposals are due and are to be delivered to the City Clerk (address below) by 6:00PM (PST) on August 15, 2013.

**City of National City
1243 National City Boulevard
National City, CA 91950
Attention: Stacey Stevenson**

The City is not responsible for the mis-delivery to the wrong building or address, loss, non-delivery, late delivery or physical condition of proposals sent by mail or courier service. In the event the City is closed due to an emergency the Proposal due date will be the next business day.

5. PROPOSAL FORMAT

Proposers are required to assemble its proposal in the following format/order:

<u>Proposal Response Section</u>	<u>Description</u>
PART I	Technical Proposal (Separate from Pricing Proposal)
Section 1	The City's Complete Request For Proposal (RFP)
Section 2	Proposer documents as required per this document
Section 3	Additional Proposer materials (optional)
Section 4	Financial Statements
PART II	Pricing Proposal (Separate from Technical Proposal)
Section 1	Pricing

Proposals should be submitted in the format and order outlined below. The proposal should present all information in a concise manner, neatly arranged, legible, and in terminology understandable by the City's Proposal Evaluation Committee. All information requested is to be addressed directly and completely. It is more desirable to provide

additional information, rather than less, when the answer could be misinterpreted. There should be no attachments, enclosures, or exhibits other than those considered by the Proposer to be essential to a complete understanding of the proposal submitted. Each section of the proposal must be clearly identified with the following headings, and in the order specified:

Proposals submitted must include a full set of this City Request for Proposal package and all necessary drafted narrative proposal pages necessary for the Proposer to fully detail their qualifications, project methodology, and project cost proposal.

*****PROPOSALS SHOULD BE SUBMITTED AND TITLED IN THE FORMAT AND ORDER OUTLINED BELOW*****

Each section of the proposal must be clearly identified with the following headings:

PART I:

SECTION 1: THE CITY'S COMPLETE REQUEST FOR PROPOSAL (RFP)

The City's complete Request for Proposal with all pages and issued Addendum.

SECTION 2: PROPOSER DOCUMENTS AS REQUIRED PER THIS DOCUMENT

A. COMPANY/INDIVIDUAL INFORMATION

- 1) State the full name and address of your company and, if applicable, the branch office or other subordinate element that will perform, or assist in performing, the work herein. Indicate whether it operates as an individual, partnership, or corporation. If it is as a corporation, include the State in which it is incorporated and, if appropriate, state whether your firm is licensed to operate in the State of California. If it is a joint venture or limited partnership, include the structure of any partnerships and percentages of interest of each member in the partnership(s).

Give a brief history of your firm since inception, to include:

- a. A list of principals
- b. An organizational chart
- c. Size and location(s) of your firm, to include number(s) of employees at each location
- d. A description of the types of services provided by your firm and the number of years provided
- e. The contact person(s) for this RFP process, and
- f. A description of your annual employee turnover for your claims unit

- 2) Discuss any major changes in your firm's structure or ownership over the past three years. Discuss anticipated changes in your firm's structure or ownership in the future.
- 3) Discuss your firm's affiliation, if any, with a parent firm.
- 4) Discuss your firm's affiliation with:
 - a. Medical service providers
 - b. Medical bill review services
 - c. Medical Provider Networks, Preferred Provider Organizations
- 5) Describe your firm's mission and goals as related to corporate growth, customer service, quality assurance and quality control management, and affirmative action standards.
- 6) Describe the number and types of clients your firm currently provides TPA services to, both corporately and locally. Please list all public agency clients with 500 or less employees and number of years served. Provide contact names and phone numbers for the 3 oldest clients.
- 7) Provide information regarding any contracts which the Proposer has been terminated from within the past thirty-six (36) months with an explanation of the termination.

B. STATEMENT OF QUALIFICATIONS

- 1) Experience:
 - a. Provide a description of each partner (to include joint venture and limited partner(s)) and principal's medical qualification and experience, if any. This experience should include similar medical services in which each partner and/or principal was a major contributor.
 - b. Indicate the experience, resources, understanding, qualifications, etc. of your firm in providing the Workers' Compensation Claims Audit services detailed herein which Proposer believes demonstrates their individual and/or firm's experience in providing the identified and specified services. Include sufficient detail to demonstrate the relevance of such experience. This portion of the proposal should include all other similar projects performed by your firm, especially those performed for mid or similar-sized entities. Information should include a description of said project, the location and size of each project, a management-level contact representative at the organization(s), referenced along with a contact telephone number. The City reserves the right to interview referenced clients.

- c. Provide a list of civil and/or criminal judgments, settlements, or penalties in excess of \$10,000, past and present, and pending litigation regarding provided claims administration services in which your firm or any team member are involved, and/or any other litigation with the likelihood of a material adverse impact on the Proposer's financial conditions and ability to complete the terms of the agreement. Please indicate if your firm has ever been debarred by a Public Agency. If this section does not apply, provide an affidavit stating there are no judgments.

2) Claims Unit Assigned to this Contract:

- a. Discuss the allocation of personnel your firm will use to staff a dedicated claims unit to adjust the City's claims. Describe the title, function, and minimum ongoing training/experience requirements for each position.
- b. Of the personnel you plan to use to staff this claims unit, please indicate when they attained their certification to administer self-insured claims (SIP Certification).
- c. Explain your firm's current policies regarding the assignment of claims to each claims supervisor, claims examiner, and claims assistant. Include a description of the number and types of claims assigned to each position.
- d. Discuss your firm's standard ratio for case closures as related to new claims. Explain how you utilize closure performance comparisons and the frequency that these comparisons are calculated. Explain other criteria used to determine the appropriateness of closing claims.
- e. Please submit any Claims and Litigation Management Guidelines your firm uses.
- f. Explain how the claims adjuster will coordinate legal activities with legal counsel once a claim is assigned to defense counsel. Please include a sample of the form your firm uses to forward claims to defense counsel.
- g. Give a brief description of your examiners' protocol for managing medications and prescriptions.
- h. Please submit occupational clinic guidelines used.
- i. Describe your method of managing return-to-work timelines for all lost time cases including surgical.
- j. Discuss your interaction with clients in reporting on account management or claims related issues. How frequently do you expect supervisors and/or adjusters to initiate contact with the City? What is your protocol regarding returning telephone and/or email messages?

3) Staff Documentation:

- a. Please provide resume(s) and copies of any pertinent certification(s), license(s) for individual staff member's to be assigned to this project.

C. MANAGEMENT INFORMATION SYSTEM(S)

- 1) Describe the type of data processing hardware and software proposed for this contract. Discuss your firm's experience in using the proposed system, whether it is owned and operated in-house or through an agreement with another provider, the general capabilities of this system, compatibility with other existing systems for continuity of data and transferring of historical data, and any projected upgrades or changes anticipated during the term of this contract.
- 2) List and describe the management information reports generated by your firm's data processing system. Identify those reports which are standard and included in the service fee. Identify those reports which are optional and the cost for generating these reports. Include in each description the interval at which the reports are generated. Provide a one-page example of each report listed.
- 3) Describe the unique features of the management information reports provided by your firm that may typically not be provided by other TPAs. Discuss the ability of your system to "batch-pay" vendors and provide a sample to demonstrate this function. "Batch-pay" means one check for multiple claims handled by a vendor, e.g. a legal firm's monthly billings on all files handled by the firm
- 4) Discuss the ability of your system to generate special "batch" reports as specified by the City. Discuss the fees associated with these special reports and the typical turnaround time that can be expected.
- 5) Discuss the methods used by your firm to segregate and track CalOSHA-recordable injuries, first-aid injuries, medical-only injuries, time-loss injuries, diagnostic medical treatment, denials, aggravations, and any other claim type designations.
- 6) Describe how your system differentiates workers' compensation injuries and days lost from OSHA-recordable injuries and days lost. Explain the features of the CalOSHA log report that is generated by your system, to include how it is reconciled against the workers' compensation data; provide an example.
- 7) Describe your firm's ability to provide the City with a minimum of three (3) MIS user connections on existing City computers allowing for full database access and standard/ad hoc report writing/generating.
- 8) Discuss the MIS technical support services provided by your firm. Include the location of the MIS staff and how many clients are serviced by that location.

- 9) Discuss your firm's ability to provide telephonic and email assistance to City staff – both from a claim position and from a technical assistance position.

D. PROPOSED METHODOLOGY

- 1) Proposers are to include in their proposals a written summary statement of their proposed methodology for providing the administrative services detailed herein. In said statement of Proposed Methodology, Proposers shall address the procedures, steps, documentation, etc. that they will employ in providing the requested services.
- 2) Provide a detailed transition plan which will ensure the continuance of uninterrupted services to the City and its injured employees. Include in the plan the name/title of the primary and alternate contact person(s), transition timeline, necessary resources for an efficient transition, and the transition costs, if any.
- 3) Describe in detail your firm's data processing and staff experience with converting claim and financial records data from former TPAs to your proposed system. Provide the client's company name, type of system converted from, contact name, and phone number.
- 4) Describe your firm's plan for provision of each of the following required service elements. Include documentation of your firm's philosophy, protocol, and readiness to provide the following services:
 - a. Early Intervention Program
 - b. Transitional Work Program
 - c. Managed Care Services
 - d. Electronic Claim Reporting Service
 - e. Medical Provider Network
 - i. Include the number of members in the MPN to be used and the number of specialties represented.
 - f. Bill Review Services
- 5) List and describe the features that distinguish your firm from other Third Party Administrators.

SECTION 3: ADDITIONAL PROPOSER MATERIALS (OPTIONAL)

SECTION 4: FINANCIAL STATEMENTS

Proposers are to submit with their proposal packages an audited financial statement from your firm and any parent company for the last two years of operation.

PART II:

SECTION 1: PRICING (Packaged Separately)

The Proposer shall submit a detailed Price Proposal with fixed rates to perform all services as specified in the RFP. **Proposer shall propose a total fixed price for each year.** Price proposals shall be evaluated on total price.

Proposer shall also include an alternative **per-file** cost structure proposal.

Incomplete price proposals may deem the proposal non-responsive.

- 1) Detail the pricing to perform the specified services requested herein. Please list those separately in your pricing structure as per the following:

- a. **Contract Service Costs**

- Said Contract Service Costs shall be inclusive of all required program elements with the exception of Managed Care Services and Bill Review Services.

- b. **Managed Care Services**

- Per hour costs for both occupational and non-occupational cases (Non-occupational cases would be on an exception basis, historically less than five (5) per year)

- c. **Bill Review Services**

- Per bill cost

- 2) Discuss your firm's method of paying for bill review services. What is the cost for those services? What is the turn-around time for bill payments?
- 3) Discuss your firm's policy on payments of fines and penalties resulting from errors internal to your firm. Describe how your firm accounts for such payments.

Proposers shall provide the best competitive prices on initial submission. **Pricing shall include ALL COSTS necessary to provide requested services.**

6. METHOD OF PROPOSAL EVALUATION

Screening of Proposals

The City will screen and score all proposals for compliance with the Request for Proposals. Each proposal response will be reviewed in accordance with the criteria set forth in this RFP. During the screening process, the City's Proposal Evaluation Committee may undertake oral interviews for clarification with the proposals. The primary function of clarifications in the evaluation process is to clarify ambiguities and uncertainties in the minds of both the Proposer and the City; it should be understood that Proposers are required to convey the technical understanding, management, key personnel, and cost factors in their written proposal, rather than to negotiate such factors through oral discussions.

The selection process for the Proposer(s) shall be based upon, but not limited to, the following evaluation criteria:

1) Qualifications, Strength, Expertise, & References

The City will evaluate the experience, knowledge, expertise and qualifications of the staff and past performance with cities of similar size and scope. The City may also evaluate the financial stability of each Proposer.

2) Management Information System(S)/Methodology

The City will evaluate the management information system(s)/methodology used to implement and provide the services as per the overall requirements as detailed in the Scope of Work Section.

3) Pricing

The City will evaluate in their scoring the prices offered for the services requested herein.

7. PROPOSAL EVALUATION AND NEGOTIATION CONFERENCE

Upon completion of the City's scoring of proposals as detailed above, the City reserves the right to select the highest scored Proposals as finalists for continued oral interviews, negotiations, and/or demonstrations of their submitted proposals based on the City's analysis and rating of the proposal package. The interviews shall include, but not be limited to, effectively negotiate proposal pricing and services submitted, evaluate expertise, qualifications, operations, services, or any other areas of negotiation relevant to the contract deemed by the City to be in its best interest.

The City may request that the remaining Proposer(s) submit, in writing, by a prescribed time and date, a "Best and Final" offer.

8. METHOD OF AWARD

The City reserves the right to make an award on the basis of the initial proposals received without discussions, oral or in person interviews, or further negotiations with Proposers. **For this reason, Proposers should submit a complete, comprehensive and most favorably priced proposal.**

Award preference may be given, at the City's sole discretion, to the Proposer whose offer the City evaluates as the most cost effective, operationally comprehensive and beneficial, or which is determined by the City to be in its best interest. The evaluation, scoring and award decision of the City shall be final.

The City is the sole judge as to which Proposer(s) substantially meets the proposal evaluation criteria and requirements of the City. **The City reserves the right to make an award of this proposal any time up to 120 days from the date of proposal opening.**

9. EXCEPTIONS BY PROPOSERS TO RFP TERMS AND CONDITIONS

Any exceptions, qualifications, etc. that the Proposer takes to any of the terms, conditions, requirements, specifications, etc. set forth in this RFP must be detailed by the Proposer in a separate document titled "Exceptions to RFP Terms, Conditions, Requirements and Specifications". Said document must be submitted with Proposer's submitted proposal. Said exceptions, qualifications, etc. must identify the RFP page number, section and paragraph title and clearly detail the exception, qualification, etc. being taken by the Proposer. Any such exceptions, qualifications, etc. that the Proposers may set forth/take shall be considered and points deducted in the City's scoring and evaluation of proposals. Said scoring deductions for said exceptions, qualifications, etc. may result in Proposer's elimination from selection as a contract award finalist/candidate. The scoring deduction that the City determines shall be at the City's sole discretion and determination. The decision of the City shall be final.

10. AMENDMENTS AND ADDENDUMS

The terms and conditions contained in the Request for Proposal, Proposal Form, General Instructions, Scope of Work, General Conditions and Agreement herein may be amended or modified **only with the prior written approval of the City**. Any addenda or bulletins issued prior to the opening of the Request for Proposal shall form a part of the specifications issued to Proposers for the preparation of their proposals and shall constitute a part of the contract documents.

Any modification, qualification, exception or change made to the City's terms and conditions detailed herein may be grounds for rejection of the proposal.

The determination and decision of the City shall be final.

11. REJECTION OF PROPOSALS

The City reserves the right to accept or reject any and all proposals, and to waive any irregularities or informalities in the proposals, or any portion and or combination thereof. The City reserves the right to award on the basis of the total proposal as may be determined by the City, to be in the best interest of the City.

12. PROPOSAL LACKING SPECIFICITY

A proposal to any specific requirement of this Request for Proposal with text such a "negotiable", "will negotiate", or similar text, will be considered non-responsive to that specific item and may render the entire proposal non-responsive and subject to rejection.

13. EVIDENCE OF RESPONSIBILITY

Upon request of the City, a Proposer shall submit promptly to the City satisfactory evidence showing the Proposer's financial resources, the Proposer's experience in the type of work being required by the City, the Proposer's organization available for the performance of the work and any other required evidence of the Proposer's qualifications to perform. The City

may consider such evidence before making its decision. Failure to submit evidence of Proposer's responsibility to perform may result in rejection of the proposal.

14. PREVIOUS PERFORMANCE

The City reserves the right to reject a proposal from a Proposer that cannot demonstrate the ability to provide the services required. Proposers must provide verification that they have been in the business as required for compliance with the requirements of this proposal, for at least two (2) years and that, during this time, have provided similar services in size and operation in its business processes.

15. PROPOSERS INTERESTED IN MORE THAN ONE PROPOSAL

No person, firm or corporation shall be allowed to make, or file, or be interested in more than one proposal for the same work unless special proposal conditions indicate otherwise. A person, firm, or corporation who has submitted a sub-proposal to a Proposer, or who has quoted prices of materials to a Proposer is not thereby disqualified from itself submitting a proposal or quoting prices to other Proposers.

16. TELEPHONE EXPENSE

Any expense resulting from long distance phone calls related to this Proposal shall be paid for by the Proposer.

The City reserves the right to make "collect" long distance telephone calls to any Proposer, or the Proposer must provide a toll-free telephone number, for any reason related to this proposal, i.e., scheduling, literature, check work status, place orders, etc.

17. COST OF PROPOSAL PREPARATION

Cost of preparation of the response to the Request for Proposal is solely the responsibility of the Proposer. National City accepts or implies no liability in the cost of preparation.

18. NEWS RELEASES

News releases pertaining to this RFP or the services, study, data, or project to which it relates will not be made without the prior written approval of the City. No results of the project are to be released without prior written approval of the City.

19. INDEPENDENT PRICE DETERMINATION

By submission of a proposal, the Proposer certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:

- A. The prices in the proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting

competition as to any matter relating to such prices with any other Proposer or with any competitor; and

- B. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the Proposer prior to award directly or indirectly to any other Proposer or to any competitor; and that no attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.

20. CONTRACTOR LICENSE / CERTIFICATION INFORMATION

If applicable, Proposer and any utilized subcontractor should have current State of California Certifications in compliance with California Code of Regulations and applicable laws.

SCOPE OF WORK SECTION

THE SUCCESSFUL PROPOSER SHALL BE REQUIRED TO PROVIDE AND/OR PERFORM THE FOLLOWING SERVICES. ALL SPECIFIED SERVICES SHALL BE PERFORMED IN FULL COMPLIANCE WITH ALL LOCAL, STATE, FEDERAL REGULATIONS AND LAWS, AND CITY STANDARDS.

1. General Requirements

During the term of the Agreement, the TPA shall:

- A. Possess a valid State of California certificate to administer self-insured workers' compensation claims, be licensed to do business in the State of California, have a base office in California with a history of providing said services in California, and the supporting staff assigned to the account for examining, adjusting, and processing all claims, are within the State of California;
- B. At its sole cost and expense, insure its activities in connection with the agreement as follows:
 - 1) Workers' Compensation Insurance as required under the Workers' Compensation Laws of the State of California;
 - 2) Commercial General Liability Insurance with a minimum limit of liability of two million dollars (\$2,000,000) per occurrence with a four million (\$4,000,000) aggregate;
 - 3) Business Automobile Liability Insurance with a minimum limit of liability of one million dollars (\$1,000,000) per occurrence for owned, non-owned, and hired vehicles;
 - 4) Professional Liability/Errors & Omissions Insurance with a minimum limit of liability of one million dollars (\$1,000,000) per occurrence;
 - 5) The issuance of a Fidelity Bond with a minimum limit of liability of one million dollars (\$1,000,000) protecting the City from loss due to access to the claims checking account;
 - 6) Name the City as additional insured and furnish the City with Certificates of Insurance evidencing compliance with all insurance requirements; and
 - 7) Defend, indemnify, and hold the City, its officers, employees, and agents harmless from and against any and all liability, loss, expense (to include reasonable attorney's fees), or claims for injury or damages arising out of the performance of an agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent acts or omissions of the TPA.
- C. Be legally liable for any fines, citations, penalties, or other assessments made against the City because of any deficiencies in the services rendered, or required to be rendered, under this Agreement;
- D. Assign a minimum number of Adjusters/Senior Examiners, Supervisor(s), Manager(s), Assistant Examiners, and general office support staff to establish an examiner case load of no

more than 125 open/active claims (**City will maintain a right of refusal of all staff members assigned to the account**);

- E. Adjusters/Senior Examiners assigned to this project must have experience (with appropriate associated education) adjusting workers' compensation claims, experience processing salary-continuation benefits, and hold a State of California Self-Insured Plans (SIP) Certificate at the time of contract start date (**City will maintain a right of refusal of all staff members assigned to the account**);
- F. Supervisor(s) and Manager(s) must have experience handling/supervising all aspects of the workers' compensation processes and be SIP certified for a minimum of three (3) years' experience at the time of contract start date (**City will maintain a right of refusal of all staff members assigned to the account**);
- G. Assign a Transitional Work Coordinator(s) to the account that must have experience adjusting workers' compensation claims, or appropriate experience with vocational rehabilitation service provision, and possess the designation of Certified Professional Disability Manager (CPDM) or equivalent (**City will maintain a right of refusal of all staff members assigned to the account**);
- H. Provide advanced-level programming and report design/production support for the database system to be utilized on the City account as well as by designated City employees. A designated TPA employee must be available for telephonic assistance as well as on site assistance in the initial system setup, training, and as-needed problem solving (**City will maintain a right of refusal of all staff members assigned to the account**);
- I. TPA employee coverage for the City's account must be available daily from 8:00 a.m. to 5:00 p.m., (PST).
- J. The City retains the right to evaluate and/or test the data transfer capabilities of the TPA's proposed database system from the existing database system;
- K. While it is desirable, the City does not require the contracted TPA to be located within the San Diego region. However, during coverage business hours, the contracted TPA must provide a toll-free phone number, for City employees, that will connect them to a live voice. Direct phone numbers that will connect employees to speak to, or leave a message with, Adjusters/Senior Examiners, Supervisor(s), Manager(s), and Assistant Examiners must be on all correspondence, in addition to the general TPA phone number. During non-coverage hours the toll-free number must allow recorded messages that the TPA will respond to within twenty-four (24) business hours. On occasion, TPA staff members must be available to meet with City employees at an agreed-upon site.

2. Reports

Standard, Custom, and Adhoc Reports shall be furnished at no additional cost. All requests for Custom and Adhoc Reports must be authorized by the Risk Management Department.

Reports identified by the City shall automatically be generated at the intervals specified during the negotiation process. Workers' Compensation Self-Insurer's annual report is to be delivered to the City by August 1st of each year of the contract. CAL/OSHA logs are to be prepared upon request within twenty-four (24) business hours.

Standard reports are typically monthly loss runs with employee names, occupation, DOI, accident description, injured body part, claim status, reserves, paid to date and incurred cost information. The same data periodically by occupation and/or department, executive summaries, check ruins and CAL/OSHA logs.

3. Required Services Descriptions

All proposals must include a description of client access to reports and claims electronically, with cost estimates for "triage" of assumed claims, a description of the "triage" team, a detailed timeline for take-over and integration of assumed claims into the TPA's overall administration program.

At a minimum, the TPA will provide all services listed below. During the term of the contract, the TPA shall represent, and act on behalf of, the City in matters pertaining to the administration of all workers' compensation claims incurred during the term of this agreement as well as all assumed claims with dates of loss predating the contract.

A. Claims Administration:

- 1) Receive notice and create claim files for all reported claims and maintain said claim files for the City.
- 2) Process all claims for workers' compensation benefits in accordance with State law, to include but not be limited to the completion of California's First Report of Injury or Illness (Form 5020);
- 3) For all claims, contact injured employee by phone within 24 hours. Follow-up contact will also be made when a disabled employee is released to work, at time of settlement for unrepresented workers, and at least every 60 calendar days;
- 4) Investigate each reported claim to determine validity and compensability;
- 5) Promptly determine all benefits due for all compensable claims;
- 6) Guarantee timely delivery of all benefits, related expenses, to include but not be limited to investigations, rehabilitation, job analysis, medical services and reports, independent medical/hospital bill review fees, and Allocated Loss Expense due in accordance with payment procedures as established from funds provided by the City. The City shall be wholly responsible for providing such funds as may be required for such payments. Once the employee's leave and other accruals are exhausted, Temporary Disability checks are sent directly to the employee from the TPA. The TPA handles all other loss and expense payments;
- 7) Properly and adequately document and handle defense of all claims considered non-compensable, assist and provide direction to selected legal counsel in preparation for defending the City through all stages of litigation;

- 8) Properly and adequately maintain pertinent data on all claim payments, providing the City full documentation of same;
- 9) Provide monthly and quarterly computerized loss reports in a tailored format as mutually agreed upon at inception of the program;
- 10) File all required claim information with appropriate State Administrative Departments and/or Agencies as necessary, within the required timeframes;
- 11) Provide all personnel necessary to perform the services as agreed upon under the Agreement;
- 12) Provide complete claims handling and adjustment services of all assigned losses, to include initial and ongoing investigation, medical and litigation direction, and ongoing supervisory oversight, to include all cost control efforts through final claim resolution and/or closure;
- 13) Maintain an organized and well-documented claim file for each reported loss, which shall be made available for audit by the City or its assigned representative(s);
- 14) Develop, implement, and maintain a *claim-specific* plan of action to include a meaningful resolution plan for each claim incurred, to include claims which do not result in lost time or permanent disability; and address any issues that arise to be accessible through the computerized diary;
- 15) **Promptly, or within three business days** establish, monitor, and periodically adjust claim-specific reserves through the life of each claim, to include adequate and appropriate analyses of all reserve changes in a format meeting with the City's approval;
- 16) Provide immediate, or within one business day, detailed notification to a designated City employee when any individual claim reserve is increased in excess of 50% of the prior month's reserve, or by \$50,000, to include a **detailed rationale for all such increases**;
- 17) Maintain a computerized diary – in the adjuster's notes – for each City claim, to include appropriate documentation regarding action and timing;
- 18) Prepare and file appropriate agency reports on all bodily injury and lost-time work-related injury claims;
- 19) Ensure all bill reviews, payments with adjustment advice, notices of rejection and/or denials of liability are issued within mandated timeframes **with prompt (within three business days) detailed advice of all penalties to the City**;
- 20) Conduct all medical and other appropriate bill reviews as required by statute, ensuring reasonableness, causal relationship, conformity to the appropriate fee schedule and/or established requirements, agreements, and guidelines arranging physical rehabilitation services as appropriate;
- 21) Provide all treating physicians with documentation of injured employees' essential job duties with an emphasis on early return to work practices, in close coordination with the City's designated representative;
- 22) Conduct and/or assist in conducting ongoing orientation and educational meetings for City personnel involved directly or indirectly with the reporting of injuries and the processing of claims;
- 23) Attend quarterly meetings, and conduct periodic in-person file reviews of claims as may be requested, on a case by case basis, by the City or according to pre-approved claim review protocol.

- 24) Provide the City up-dates on changes (or proposed changes) in statutes, rules, and regulations that affect the City's claims management, and recommend appropriate strategies for implementation of such changes;
- 25) **Promptly (within three business days) obtain concurrence or authorization** from the designated City employee, for all claim settlements above the negotiated settlement authority of \$1,000.00, providing an in-depth analysis of value and rationale for all recommended settlements, to include appropriate supporting documentation;
- 26) Assist injured employees in obtaining and negotiating appropriate disability ratings. However, appropriate efforts should be put forth to achieve informal claims resolution through direct negotiation with injured workers and/or their legal representatives, referring claims to defense counsel only when all such efforts have been exhausted by the claims adjuster;
- 27) Attend all arbitration proceedings, hearings, and/or trials wherever possible and appropriate;
- 28) Maintain direct contact and use of a Medical Provider Network (MPN) Program for use in the administration and treatment of the City's claims, maintaining ongoing contact with the selected network panel members to ensure their cooperation;
- 29) Review of all injuries for appropriate referral to the City's preferred providers/network and rerouting medical services to said providers wherever available;
- 30) Provide Utilization Review and approval for all consults, diagnostics, physical therapy, pharmaceuticals, and other employer controlled medical services;
- 31) Provide follow-up and intervention with medical service providers on behalf of the City and the injured employee;
- 32) Complete all surgery pre-certifications;
- 33) Provide all physical restriction information to the designated City employee;
- 34) Investigate and pursue all potential subrogation issues on behalf of the City, to include "Second" or "Special" fund recoveries as appropriate; **apportionment cases and issues are to be vigorously pursued upon approval of the City.**
- 35) Consult with the City to identify and select appropriate legal counsel, directing and coordinating counsel's activities on all litigation assignments;
- 36) Monitor defense counsel billings and expenses for appropriateness and containment of costs;
- 37) Prepare, maintain, and file all records and reports as required by local, state, or federal authorities on behalf of the City;
- 38) Coordinate and/or issue payment of all City claims and related expenses in a timely and appropriate manner;
- 39) Maintain all closed claim files for the duration of the contract, or upon termination return them to the City or as otherwise directed.
- 40) Conduct internal audits of a representative sampling of the City's workers' compensation claim file **no less often than annually**;
- 41) Conduct subrogation activities as necessary.
- 42) Coordinate and/or ensure compliance with all mandatory Medicare reporting requirements.

B. Database Management Services:

The TPA shall provide full automation of the entire claims administration process to the City at no additional cost. At a minimum, the service shall include:

- 1) Implementation programming, set-up, and data conversion;
- 2) Loss report production and distribution;
- 3) National Compensation Claims Institute (NCCI), Insurance Services Office (ISO), and National Association of Insurance Council (NAIC) reporting;
- 4) Actuarial reporting/information transfer;
- 5) State EDI requirements;
- 6) IRS 1099 tax filings;
- 7) OSHA reporting requirements;
- 8) Electronic access to all database claims information and reporting function from designated City employees;
- 9) Provide three (3) MIS connections.

C. Transitional Work Services:

The TPA is required to provide dedicated specialized staff for the purpose of providing transitional work services to assist injured employees with return to temporary modified duties. The Proposer shall include these services in the overall administration fee and will work with the designated City employee in this action. The services expected under this program include, but are not limited to:

- 1) Review of all injuries for which temporary work restrictions are provided;
- 2) Work with the designated City employee and City departments in identifying and placing injured employees into work-restricted assignments that will facilitate an earlier return to work;
- 3) Work with injured employees, physicians, therapists, the designated City employee, and departments to clarify restrictions, appropriateness of assigned tasks and scheduling of ongoing treatment/therapy while employee remains on transitional duty;
- 4) Assist in monitoring and modifying task assignments in order to ensure progressive recovery from injury;
- 5) Track duration of transitional work assignments within the database system in order to meet OSHA/CAL-OSHA reporting requirements.

D. Managed Care Services:

Managed care services are separate and distinct from the required early intervention and transitional work services. The TPA shall establish a clear protocol by which managed care services are triggered, and establish necessity over-and-above the early intervention and transitional programs.

Managed care costs shall be allocated to the involved claim files, not included as part of the contract administration fee, and are subject to the prevailing rates. All referrals to managed care shall be accomplished through the early intervention services program. Services include, but are not limited to:

- 1) Early intervention/telephonic case management;
- 2) On-site/field case management (medical and vocational) and catastrophic case management;
- 3) Telephonic case management, to include:
 - a) Client-managed care procedures observance
 - b) Hospital bill pre-screening
 - c) Development of treatment/return-to-work plans (in conjunction with transitional work services as appropriate)
 - d) Pre-certification of outpatient treatment plans
 - e) Network channeling assistance where jurisdictionally permissible
 - f) Direction, monitoring, and support of on-site case managers
 - g) Managed care plan recommendations and updates in electronic claim file records
 - h) Life-care plans
 - i) Utilization management services
 - j) Medical bills negotiation and re-pricing
 - k) Medical Provider Network (MPN)
 - l) Pharmaceutical Product Plan
 - m) Physician peer review services
 - n) Case reserve and closure consultation (with adjuster)

E. Preferred Provider Organization (PPO) Network:

The TPA shall participate in, and make available with the City's final selection, an established and extensive Preferred Provider Organization (PPO) Network, as well as pharmaceutical and medical appliance programs. These services must provide significant savings below the medical services fees contained within the State of California Official Medical Fees Schedule. The TPA shall provide information on its proposed services along with the benefits to the City if treatment is directed to the participants of the network or said programs.

F. Bill Review Services:

The TPA shall provide bill review services for all invoices received unless otherwise specified by the City. Fees associated with the bill review service shall be on a per-bill basis. For bills submitted by MPN members, the TPA shall share a percentage of the savings below the California Official Medical Fee Schedule rates in addition to the per-bill charge. For Joint Ventures or TPAs without in-house or affiliated bill review services, this function must be contracted to a single bill review company.

G. Other Services:

The City reserves the right to discuss modifications and additions to the agreed-upon contract services throughout the term of the agreement. Should additional services become desirable, the City and the TPA shall negotiate the terms of such desired services, as appropriate. If the TPA is unable to provide the desired services in a manner acceptable to the City, the City may

identify an alternate service provider and obtain the services in a manner agreeable to all involved parties.

**AGREEMENT
BY AND BETWEEN
THE CITY OF NATIONAL CITY
AND**

THIS AGREEMENT is entered into this _____ day of _____, 20____, by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and _____, a _____ (the "CONSULTANT").

R E C I T A L S

WHEREAS, the CITY desires to employ a CONSULTANT to provide _____.

WHEREAS, the CITY has determined that the CONSULTANT is a *(delete and insert type of business)* and is qualified by experience and ability to perform the services desired by the CITY, and the CONSULTANT is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT.** The CITY agrees to engage the CONSULTANT, and the CONSULTANT agrees to perform the services set forth here in accordance with all terms and conditions contained herein.

The CONSULTANT represents that all services shall be performed directly by the CONSULTANT or under direct supervision of the CONSULTANT.

2. **SCOPE OF SERVICES.** **[PROVIDE GENERAL DESCRIPTION OF WORK THEY ARE PERFORMING HERE.]** The CONSULTANT will perform services as set forth in the attached Exhibit "____".

The CONSULTANT shall be responsible for all research and reviews related to the work and shall not rely on personnel of the CITY for such services, except as authorized in advance by the CITY. The CONSULTANT shall appear at meetings specified in Exhibit "____" to keep staff and City Council advised of the progress on the Project.

The CITY may unilaterally, or upon request from the CONSULTANT, from time to time reduce or increase the Scope of Services to be performed by the CONSULTANT under this Agreement. Upon doing so, the CITY and the CONSULTANT agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services, not to exceed a factor of _____% from the base amount.

3. **PROJECT COORDINATION AND SUPERVISION.**
_____ hereby is designated as the Project Coordinator for the CITY and

will monitor the progress and execution of this Agreement. The CONSULTANT shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONSULTANT. _____ thereby is designated as the Project Director for the CONSULTANT.

4. **COMPENSATION AND PAYMENT.** The compensation for the CONSULTANT shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked and also materials, if any. The total cost for all work described in Exhibit “___” shall not exceed the schedule given in Exhibit “___” (the Base amount) without prior written authorization from the _____. Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with Exhibit “___”, as determined by the CITY.

The CONSULTANT shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred, and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY, and for furnishing of copies to the CITY, if requested.

5. **ACCEPTABILITY OF WORK.** The City shall decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the acceptable completion of this Agreement, and the amount of compensation due. In the event the CONSULTANT and the City cannot agree to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the CONSULTANT in this Agreement, the City or the CONSULTANT shall give to the other written notice. Within ten (10) business days, the CONSULTANT and the City shall each prepare a report which supports their position and file the same with the other party. The City shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance and/or the compensation payable to the CONSULTANT.

6. **EFFECTIVE DATE AND LENGTH OF AGREEMENT.** This Agreement will become effective on [INSERT DATE] The duration of this Agreement is for the period of _____ through _____. Completion dates or time durations for specific portions of the Project are set forth in Exhibit “___”.

7. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications, and other documents prepared by the CONSULTANT for this Project, whether paper or electronic, shall become the property of the CITY for use with respect to this Project, and shall be turned over to the CITY upon completion of the Project, or any phase thereof, as contemplated by this Agreement.

Contemporaneously with the transfer of documents, the CONSULTANT hereby assigns to the CITY, and CONSULTANT thereby expressly waives and disclaims any copyright in, and the right to reproduce, all written material, drawings, plans, specifications, or other work prepared under this Agreement, except upon the CITY’S prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONSULTANT shall, upon request

of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONSULTANT agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium, or method utilize the CONSULTANT'S written work product for the CITY'S purposes, and the CONSULTANT expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings, or specifications prepared by the CONSULTANT shall relieve the CONSULTANT from liability under Section 14, but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of this project, unless otherwise mutually agreed.

8. **INDEPENDENT CONTRACTOR.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers with one another. Neither the CONSULTANT nor the CONSULTANT'S employees are employees of the CITY, and are not entitled to any of the rights, benefits, or privileges of the CITY'S employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONSULTANT and the CONSULTANT'S employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONSULTANT and its employees. Neither this Agreement nor any interest herein may be assigned by the CONSULTANT without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONSULTANT from employing or hiring as many employees, or SUBCONSULTANTS, as the CONSULTANT may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONSULTANT with its SUBCONSULTANT(S) shall require the SUBCONSULTANT(S) to adhere to the applicable terms of this Agreement.

9. **CONTROL.** Neither the CITY nor its officers, agents, or employees shall have any control over the conduct of the CONSULTANT or any of the CONSULTANT'S employees, except as herein set forth, and the CONSULTANT or the CONSULTANT'S agents, servants, or employees are not in any manner agents, servants, or employees of the CITY, it being understood that the CONSULTANT its agents, servants, and employees are as to the CITY wholly independent CONSULTANT, and that the CONSULTANT'S obligations to the CITY are solely such as are prescribed by this Agreement.

10. **COMPLIANCE WITH APPLICABLE LAW.** The CONSULTANT, in the performance of the services to be provided herein, shall comply with all applicable state and federal statutes and regulations, and all applicable ordinances, rules, and regulations of the City of National City, whether now in force or subsequently enacted. The CONSULTANT and each

of its SUBCONSULTANT(S), shall obtain and maintain a current City of National City business license prior to and during performance of any work pursuant to this Agreement.

11. **LICENSES, PERMITS, ETC.** The CONSULTANT represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The CONSULTANT represents and covenants that the CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONSULTANT to practice its profession.

12. **STANDARD OF CARE.**

A. The CONSULTANT, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONSULTANT'S trade or profession currently practicing under similar conditions and in similar locations. The CONSULTANT shall take all special precautions necessary to protect the CONSULTANT'S employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

B. Unless disclosed in writing prior to the date of this Agreement, the CONSULTANT warrants to the CITY that it is not now, nor has it for the five (5) years preceding, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONSULTANT'S professional performance or the furnishing of materials or services relating thereto.

C. The CONSULTANT is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONSULTANT has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONSULTANT has notified the CITY otherwise, the CONSULTANT warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONSULTANT to use due diligence under this sub-paragraph will render the CONSULTANT liable to the CITY for any increased costs that result from the CITY'S later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

13. **NON-DISCRIMINATION PROVISIONS.** The CONSULTANT shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONSULTANT will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

14. **CONFIDENTIAL INFORMATION.** The CITY may from time to time communicate to the CONSULTANT certain confidential information to enable the CONSULTANT to effectively perform the services to be provided herein. The CONSULTANT shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 13, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONSULTANT without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to the CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

The CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONSULTANT shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 14.

15. **INDEMNIFICATION AND HOLD HARMLESS.** The CONSULTANT agrees to defend, indemnify and hold harmless the City of National City, its officers and employees, against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suites, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of the CONSULTANT'S performance or other obligations under this Agreement; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers, or employees. The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the term of this Agreement.

16. **WORKERS' COMPENSATION.** The CONSULTANT shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar State or federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its officers, and employees from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the CITY or its officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONSULTANT under this Agreement.

17. **INSURANCE.** The CONSULTANT, at its sole cost and expense, shall purchase and maintain, and shall require its SUBCONSULTANT(S), when applicable, to purchase and maintain throughout the term of this Agreement, the following checked insurance policies:

A. ☐ If checked, **Professional Liability** Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. **Automobile Insurance** covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include owned, non-owned, and hired vehicles ("any auto"). The policy shall name the CITY and its officers, agents and employees as additional insureds, and a separate additional insured endorsement shall be provided.

C. **Commercial General Liability Insurance**, with minimum limits of \$2,000,000 per occurrence and \$4,000,000 aggregate, covering all bodily injury and property damage arising out of its operations under this Agreement. The policy shall name the CITY and its officers, agents and employees as additional insureds, and a separate additional insured endorsement shall be provided. The general aggregate limit must apply solely to this "project" or "location".

D. **Workers' Compensation Insurance** in an amount sufficient to meet statutory requirements covering all of CONSULTANT'S employees and employers' liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the City. Said endorsement shall be provided prior to commencement of work under this Agreement.

If CONSULTANT has no employees subject to the California Workers' Compensation and Labor laws, CONSULTANT shall execute a Declaration to that effect. Said Declaration shall be provided to CONSULTANT by CITY.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY of cancellation or material change.

F. If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CONSULTANT shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement. In addition, the "retro" date must be on or before the date of this Agreement.

G. Insurance shall be written with only California admitted companies that hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the CITY'S Risk Manager. In the event coverage is provided by non-admitted "surplus lines" carriers, they must be included on the most recent California List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meet rating requirements.

H. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY'S Risk Manager. If the CONSULTANT does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

I. All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY.

18. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including attorneys' fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorney's fees incurred in the prosecution or defense of the action or suit shall not be considered in determining the amount of the judgment or award. Attorney's fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorney's fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney's fees incurred by the prevailing party.

19. **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the "AAA") before resorting to arbitration. The costs of mediation shall be borne equally by the parties. Any controversy or claim arising out of, or relating to, this Agreement, or breach thereof, which is not resolved by mediation shall be settled by arbitration in San Diego, California, in accordance with the Commercial Arbitration Rules of the AAA then existing. Any award rendered shall be final and conclusive upon the parties, and a judgment thereon may be entered in any court having jurisdiction over the subject matter of the controversy. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the costs of its own experts, evidence and attorneys' fees, except that the arbitrator may assess such expenses or any part thereof against a specified party as part of the arbitration award.

20. **TERMINATION.**

A. This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 60-day's written notice to the CONSULTANT. During said 60-day period the CONSULTANT shall perform all services in accordance with this Agreement.

B. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement, misrepresentation by the CONSULTANT in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

C. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONSULTANT as provided for herein.

D. In the event of termination, all finished or unfinished Memoranda Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date

of the Notice of Termination, not to exceed the amounts payable hereunder, and less any damages caused the CITY by the CONSULTANT'S breach, if any. Thereafter, ownership of said written material shall vest in the CITY all rights set forth in Section 6.

E. The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONSULTANT; (2) a reorganization of the CONSULTANT for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONSULTANT.

21. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

To CITY: (Insert name)
 (Insert title)
 (Insert department)
 City of National City
 1243 National City Boulevard
 National City, CA 91950-4301

To CONSULTANT:
 (Insert name)
 (Insert title)
 (Company name)
 (Address)

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

22. **CONFLICT OF INTEREST AND POLITICAL REFORM ACT**
OBLIGATIONS. During the term of this Agreement, the CONSULTANT shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the

City of National City. The CONSULTANT also agrees not to specify any product, treatment, process or material for the project in which the CONSULTANT has a material financial interest, either direct or indirect, without first notifying the CITY of that fact. The CONSULTANT shall at all times comply with the terms of the Political Reform Act and the National City Conflict of Interest Code. The CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. The CONSULTANT represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

☐ If checked, the CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and the National City Conflict of Interest Code. Specifically, the CONSULTANT shall file a Statement of Economic Interests with the City Clerk of the City of National City in a timely manner on forms which the CONSULTANT shall obtain from the City Clerk.

The CONSULTANT shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Paragraph 22 by the CONSULTANT.

23. **PREVAILING WAGES.** State prevailing wage rates may apply to work performed under this Agreement. State prevailing wages rates apply to all public works contracts as set forth in California Labor Code, including but not limited to, Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. Consultant is solely responsible to determine if State prevailing wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.

24. **MISCELLANEOUS PROVISIONS.**

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state, or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. *Audit.* If this Agreement exceeds ten-thousand dollars (\$10,000), the parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the Agreement, per Government Code Section 8546.7.

J. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

K. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

L. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF NATIONAL CITY

By: _____
Ron Morrison, Mayor

INSERT CO'S NAME IN BOLD

(Corporation – signatures of two corporate officers)

(Partnership – one signature)

(Sole proprietorship – one signature)

By: _____
(Name)

APPROVED AS TO FORM:

(Print)

(Title)

Claudia G. Silva
City Attorney

By: _____
(Name)

(Print)

(Title)